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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1967

No. 439

BUTCHERS UNION LOCAL NO. 127, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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[redacted]
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Butchers Union Local No. 127.

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Petitioner respectfully prays that a Writ of Certiorari issue for a review of the decision of the Court of Appeals for the Ninth Circuit entered in this case on May 23, 1967, enforcing an Order of the National Labor Relations Board.

OPINION AND ORDER BELOW

The opinion of the Court of Appeals is not yet reported but is printed in Appendix A hereto, *infra*, at page i along with the Court's Decree. The Board's findings of fact, conclusions of law and order are reported at 152 N.L.R.B. 1645 (1965).

JURISDICTION

The decision of the Court of Appeals was entered on May 23, 1967; a stay pending this petition was entered on June 20, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

(1) Where the Regional Director of the Board offers a Settlement Agreement to the charged parties, and the charged parties fully execute and perform all of the terms thereof so that nothing is left of the dispute, can the Regional Director, upon mere subsequent reflection and contrary to the Board's well-established rules, as approved by this Court, repudiate the Agreement?

(2) Where the unfair labor practices charged against the Union and Company raise the question of whether employees were required involuntarily to join the Union before the expiration of the thirty (30) day grace period in §8(a)(3) of the Act (29 U.S.C. 158(a)(3)), and where the Trial Examiner has not made findings on the critical issue of volun-

tariness, has the Court of Appeals by granting enforcement of a Board order which envisions repayment of dues and initiation fees to possibly as many as 250-300 unknown, unnamed employees sanctioned the use by the Board of an assumption that employees do not want to join a union within the 30 days, an assumption which is nowhere authorized by law, nowhere supported by *any* record evidence or findings, and indeed contrary to the explicit statutory guarantee that an individual is free to join a union at any time he wants?

STATUTES AND REGULATIONS INVOLVED

The pertinent sections of the National Labor Relations Act, as amended, 29 U.S.C. 151 *et seq.*, hereinafter called the "Act," are set out in Appendix B hereto, p. xi f. and specifically include §§ 7, 8(a)(1), (2) and (3), 8(b)(1)(A) and (2) of said Act. Sections 557(c) and 706 of the Administrative Procedure Act, 5 U.S.C.A., are set out in Appendix C hereto. Sections 101.7 of the Statement of Procedure and 102.45 of the Rules and Regulations of the National Labor Relations Board are set out in Appendix D hereto.

STATEMENT OF THE CASE

On July 22, 1963 one Madeline Ritchey filed an unfair labor practice charge on behalf of herself "and others" (R. pp. 3-4).[1] The charge involved the respondent Company and Union in alleged violations

[1] "R" refers to the record reference used below and to the Clerk's Transcript thereof being filed with the Court. "R II" will refer to Volume II thereof.

of §8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) of the Act by the requirement that Mrs. Ritchey "and others" pay their dues and initiation fees before the expiration of the 30-day grace period in §8(a)(3) of the Act. The case was assigned by the Regional Director of the Board to Board Agent Dean Francis (R. p. 19).

The ensuing correspondence between Agent Francis and the attorney for the Union establishes the Settlement Agreement. The pertinent correspondence is set out in Appendix E hereto, p. xviii f. (G.C. Ex. 16A, 16C, 16G; R. U. Ex. 5, 6, 7, 8 and 10.) The particular matters to be emphasized in this correspondence are that while the proposed Settlement Agreement was originally made subject to the approval of the Regional Director, the subsequent correspondence was free of any such condition. In addition, the correspondence indicates that the Regional Director's office knew, at the time it proposed the Settlement Agreement, that there may have been "others" involved besides the charging party. The Union advised Agent Francis that it would sign upon the understanding that no violation would be claimed with respect to any other employees. The Board agent assured the Union, unequivocally, in writing, under date of August 27, 1963, that:

> "Your understanding, as expressed in your letter of August 26, that upon the execution of this Settlement Agreement there will be no claimed violation with respect to any employees employed up to the time of the expiration of the settlement is *correct.*" (Emphasis added; R. U. Ex. 5.)

Thereupon the correspondence shows that the Union executed the Agreement and the Notice to All Members. The Company likewise returned its executed Settlement Agreement and Notice (R. Co. Ex. 3 and 5). Mrs. Ritchey was reimbursed immediately for her first month's dues (R. p. 24), and the Regional Director's Office allowed the Notices to be posted, reading in large letters "Pursuant to a Settlement Agreement approved by the Regional Director of the Twentieth Region. . . ." (G. Co. Ex. 16 D); and the system whereby dues and fees had previously been collected was in fact changed (R. II, p. 153). Silence only was forthcoming from the Regional Office for some 20 days; at that time the cryptic letter of September 20, 1963, Appendix E, p. xxvii, *infra,* was received by the respondents, informing them that because of "additional matters" having come to the Region's attention, the Settlement Agreement was being withdrawn.

A new charge, called a "First Amendment," was then filed by Ritchey on November 1, 1963, identical in terms with the original, being again solely on behalf of Ritchey "and others" (R. p. 5). Already believing that a settlement had been effected under the above facts, respondents refused to enter another settlement, and a complaint issued from the Regional Director (R. p. 6).

The complaint was directed to the hiring process. The forms given the applicant were an application form and an "Employee's Voluntary Declaration" containing a check-off authorization (R. p. 19). The

applicant was also informed that his initiation fee would be deducted from his third and fourth weekly paychecks along with his first month's dues. The Union contended that whatever the practice was, the witnesses had joined the Union voluntarily. The Trial Examiner did not reach this phase of the case inasmuch as he found that there had been a Settlement Agreement. On the basis of the testimony of the eight witnesses, and without the aid of its Trial Examiner, the Board found, however, that not only had these witnesses been required to join the Union in violation of the 30-day grace period, but that the practice was illegal as to unknown, unnamed and unnumbered others, possibly 250-300 (R. p. 54). The Board's remedy in this regard is detailed in the Decree of the Court of Appeals and directs a remedy for the 250-300 employees it believes to be involved (R. pp. 82 and 84).

REASONS FOR GRANTING THE WRIT

I

THE COURT OF APPEALS HAS SANCTIONED THE REPUDIATION OF A SETTLEMENT AGREEMENT AND THE SUBSEQUENT ISSUANCE OF A COMPLAINT BY THE REGIONAL DIRECTOR, ACTS WHICH WERE ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION AND BEYOND THE JURISDICTION OF THE REGIONAL DIRECTOR. IN SO DOING THE COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A MANNER CONFLICTING WITH A DECISION OF THIS COURT AND SANCTIONED ADMINISTRATIVE ACTIVITY SO FAR DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF BOARD PROCEEDINGS AS TO CALL FOR THE EXERCISE OF THIS COURT'S POWER OF REVIEW.

There is no question but that settlement agreements have an established place in the formal Statements of Procedure of the National Labor Relations Board, Series 8, as amended; §101.7 thereof covers the subject and is set out in Appendix D of this Brief. There is no question but that the Board has a long-standing policy and decisional rule whereby it will honor its agreement unless there is a failure to comply with the agreement or independent, unfair labor practices. *United Dairy Co.*, 146 N.L.R.B. 187; *Tompkin Motor Lines*, 142 N.L.R.B. 1; *Corn Products Refining Co.*, 22 N.L.R.B. 824; *Matter of Wickwire Bros.*, 16 N.L.R.B. 316; *Matter of Godchaux Sugar*, 12 N.L.R.B. 568; *N.L.R.B. v. Superior Tool & Die Co.*, 309 F. 2d 692 (C.A. 6, 1962).

Over the years the Board has maintained the same policy behind its many decisions. Thus the Board said in *Shenandoah-Dives Mining Co.*, 11 N.L.R.B. 885, 888:

> ". . . we believe that effective administration of the Act requires that the Board's agents have the respect and confidence of labor organizations and employers with whom their work brings them in contact. Repudiation of agreements entered into and relied on in good faith necessarily impairs such respect and confidence. . . . We believe the policies of the Act will best be effectuated by giving effect to the agreement and refraining from consideration of the alleged unfair labor practices."

It was in reliance on this long-standing policy and rule of the cases that the Settlement Agreement was entered into; it was in spite of this long-standing authority that the Board repudiated the Agreement. The Settlement Agreement was drawn up by the Board; it was the Board's proposal; and it envisioned settlement of the entire charge: the Board would not claim violations with respect to any other employees besides Mrs. Ritchey.

The reasons assigned by the Board for this repudiation were: (1) the Regional Director had never approved the Agreement because he had never actually signed the forms previously executed by the respondents, and (2) "additional matters" had come to the attention of the Regional Director.

With respect to the latter, the Board told the Court of Appeals that the "additional matters" which had just come to its attention were "facts showing that respondents' unlawful arrangement affected more employees than charging party Ritchey." (G. Co. Brief,

p. 17.) This incredible statement is belied by the appended correspondence wherein Board Agent Francis demonstrates that the Regional Office was aware from the very beginning of more employees who were possibly affected by the challenged practice (Appendix E, p. xxiii). The Board cannot credibly point to "additional matters" which were unbeknown to its Regional Director. *Jackson Mfg. Co.*, 129 N.L.R.B. 460.

With respect to the excuse that the Regional Director had never actually signed the Agreement, the respondent argued to the Court of Appeals that:

(1) The argument wholly confuses "approval" with "signature," and §101.7 of the Board's rules merely refers to the "approval" of the Regional Director.

(2) The Board itself has said that it is bound by the representations and material undertakings of its duly designated and responsible agents. *Sherry & Gordon Co., Inc.*, 107 N.L.R.B. 113. The Trial Examiner, well-versed in the practical operations of the Board, noted that the Regional Director is presumably in touch with his staff on a daily basis. Since this was the Regional Director's offer of settlement, not the respondents', presumably Agent Francis reviewed the matter with the Regional Director before offering it to the respondents. Otherwise, we must conclude that Agent Francis was at all times acting without authority.

(3) The repudiation based on the failure of the Regional Director actually to sign the Agreement

reverses a prior decision of the Board itself in at least one similar case, *Sherry & Gordon Co., Inc., supra.* The Board's field examiner had led the parties to believe that the Regional Director had approved the withdrawal of charges, which was the final component of a settlement agreement. The respondent Union paid back wages and granted membership to the charging party in accordance with the settlement. In seeking to set it aside, the Regional Director disclosed that he had never signed the withdrawal. The Board disagreed and found that this was "improper procedure" and would "diminish public confidence in the administration of the Act." "Approval" was not equated with a "signature of approval." The narrow position of the Board constitutes new precedent, a major change in administrative policy and in its dealings with the bar and the public.

(4) The narrow basis asserted for repudiation is without support in prior case law and is contrary to established policy as specifically approved by this Court. In *Wallace Corporation v. N. L. R. B.*, 65 S. Ct. 238, 323 U. S. 248, 89 L. Ed. 216 (1944), this Court gathered together a number of the Board's cases and stated:

> "'To prevent disputes like the one here involved, the Board has from the very beginning encouraged compromises and settlements. [Footnote omitted.] The purpose of such attempted settlements has been to end labor disputes, and so far as possible to extinguish all the elements giving rise to them. . . . It has consistently gone behind

> such agreements, however, where subsequent events have demonstrated that efforts at adjustment have failed to accomplish their purpose, or where there has been a subsequent unfair labor practice. [Footnote omitted.] We think this rule adopted by the Board is appropriate to accomplish the Act's purpose with fairness to all concerned." *Id.* at p. 241.

Manifestly the Settlement "ended" the labor dispute and "extinguished all the elements giving rise to it." The Settlement called for reimbursement of Ritchey; this was done. It called for Notices; these were executed and posted by the Respondents, and the system for collecting dues and fees was in fact changed. There was nothing left of the dispute. There were no "subsequent events" which "demonstrated that efforts at adjustment have failed to accomplish their purpose."

The Regional Office was in possession of all the facts; there were no undisclosed facts, either before or after the Agreement; the amended charge was identical in all material respects. No one else has to this day come forward to file a charge or assert their own interest. After more than three years all the Board knows now, and indeed it knew it at the time it sent the Agreement to the respondents, is that "possibly as many as 250-300 employees" were processed. (R. p. 54.) The Board's action in this case is wholly without precedent, wholly beyond its stated purposes as codified in its own decisions and as approved by this Court in *Wallace, supra,* p. 241.

To all of this the Court of Appeals simply said that the necessity for a signature was a policy matter for the Board, *Phelps Dodge Corp. v. N.L.R.B.*, 313 U. S. 177, 194, 61 S. Ct. 845, 85 L. Ed. 1271 (1941), and that there was no arbitrary departure from settled administrative practice such as to warrant judicial intervention, *Sunbeam Television Corp. v. F. C. C.*, 243 F. 2d 26 (D.C. Cir. 1957). Contrary to the holding of the Court of Appeals, the cited Board cases and decision of this Court in *Wallace, supra,* have established a clear, long-standing rule whereby the Board would not equate approval with a simple signature and would not set aside a settlement agreement except for certain stated, well-known reasons, and absent those reasons, certainly never where the parties had already acted on the representations of its responsible agents.

The Court of Appeals, however, mistakes the petitioner's position. The petitioner does not challenge the policy-making authority of the Board and, contrary to the Court's opinion, does not challenge the wisdom of "approval" by the Regional Director's actual signature, if properly done. What is challenged is the tardy determination, in this case, first by the Regional Director, and then by the Board that approval means nothing less than a signature, a determination without precedent and contrary to the previous policy and above-cited decisions, and a determination obviously used to recoup what the Regional Director upon long delayed second-thought deemed an unauspicious settlement. The repudiation was, under the circumstances,

arbitrary, capricious, an abuse of administrative discretion, and made without observance of that procedure required by law. That is, as was argued to the Court of Appeals, if the Board wished to change its policy in support of its Regional Director, it should have done so prospectively only. *N.L.R.B. v. Majestic Weaving Co.*, 355 F. 2d 854 (C.A. 2, 1966); *N.L.R.B. v. Atkinson*, 195 F. 2d 141 (C.A. 9, 1952); *Madden v. International Org. of Masters, Mates, etc.*, 259 F. 2d 297 (C.A. 7, 1958); *N.L.R.B. v. Fleetwood Trailer Co., Inc.*, 366 F. 2d 126 (C.A. 9, 1966, concur. opin.); 5 U.S.C.A. §706.

The Court of Appeals has missed the importance of the Regional Director's action to the Administration of the Act. The Trial Examiner himself well-noted the grave problems surrounding the relationship of the Board to the labor bar and to the public, if it is able to avoid its commitments by the conduct involved here (R. p. 35). The implications of this case for the public and the labor bar in dealing with the Board's Regional Director run well beyond the context of settlement agreements and color the confidence in the Board's every agent, representation, and function. Under the circumstances, this was a completely arbitrary departure from settled administrative practice, requiring judicial intervention.

The resultant complaint issued by the Regional Director of the Board was also beyond the Board's jurisdiction. The filing of a proper charge is a jurisdictional prerequisite to the issuance of a complaint by the Regional Director, *N.L.R.B. v. National Lic-*

orice Co., 60 S. Ct. 659, 309 U. S. 350, 84 L. Ed. 799 (1940). In light of the settlement, there was no vital charge on which the Regional Director could issue a complaint.

The vague allegation "and others" in each of the charges was too vague to preserve the validity of the charge, as the Board itself has recognized in the analogous situation of *Mid-States Steel & Wire Co.*, 112 NLRB 800. The first amendment charge had only form, not substance, and was void (R. p. 5). The only specific allegation of illegality in the charge was dated April 17, 1963; the amendment charge having been filed October 31, 1963, the six-months statute of limitations in §10(b) had run. Such arbitrary and unauthorized conduct alone calls for the review of this Court.

II

THE DECISION AND ORDER OF THE BOARD WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE.

With respect to the witnesses who testified, the Union contended that they had joined the Union voluntarily. They testified that they read the check-off authorization card which was captioned "Employee's Voluntary Declaration" at the time they signed it (R. p. 19). The legality of the check-off provisions in the contract is admitted. Some of the employees had previously belonged to other unions and presumably fully wanted to belong again. Those few who in fact

complained of the procedure to the Company or Union prior to the filing of the unfair labor practice charge involved in this litigation, such as witnesses Young and White, were in fact reimbursed. The Company's secretaries had no instructions if someone complained, because complaints had simply never before occurred. There was no evidence of coercion but rather of a whole atmosphere of voluntary practice which had simply gone unquestioned (R. II, p. 162). No findings were made by the Trial Examiner on this issue of voluntariness, but the Board made such finding even for the 250-300 "others."

The Trial Examiner's Decision is part of the entire record before the reviewing court. *Universal Camera Corp. v. N.L.R.B.*, 71 S. Ct. 456, 340 U.S. 474, 95 L. Ed. 456 (1951). Pursuant to §102.45 of the Board's Rules and §557(c) of the A.P.A., his Decision is to contain findings and conclusions, and the reasons therefor, upon all material issues of fact, law or discretion presented on the record. In this case the Board performed that function without even a remand. Credibility findings are part of the record. *Universal Camera, supra,* at p. 469. Even inferences can be drawn from conduct not otherwise in serious dispute. For example, the witnesses testified they were told they would have to join the Union. In the total context did this mean now or at some time in the future? The Board had before it only words; the Trial Examiner had observed the witnesses and would have had "a more accurate feel . . .," *N.L.R.B. v. Majestic Weaving, supra,* for the inferences to be drawn.

Implicit in the holding of the Board and the Court of Appeals is the administrative assumption by the Board that employees do not really want to become union members until they really have to. Section 7 of the Act gives the employee the right to join of his own free will at any time; there is no statutory assumption, nor authority for it, such as is implicit in the Board's position with respect to the 250-300 unknown and unnamed employees. If the Board contends that this is another policy determination whereby the Board is authorized to effectuate the policies of this Act (§10(c)) and pursue the public interest, how is the policy of the Act furthered, and the public interest served, by engaging in an assumption which is on its face, flagrantly contrary to the clear guarantee, contained in the same Act, of a right to join at any time? The assumption and findings of the Board are without substantial evidence in the record as a whole. This Court is asked to review such a determination which sanctions without evidence, an assumption directly contrary to the clear language of the Act and the decisions of this Court from *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 563 (1937) through innumerable cases in this Court to date.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the writ of this Court be issued.

Dated, San Francisco, California,
July 17, 1967.

Respectfully submitted,
CHARLES P. SCULLY,
Attorney for Petitioner
Butchers Union Local No. 127.

(Appendices Follow)

Appendix A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner,* vs. CAMPBELL SOUP COMPANY and BUTCHERS UNION LOCAL 127, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, *Respondents.*	No. 21,297

[May 23, 1967]

On Petition to Enforce an Order of the National Labor Relations Board

Before: MERRILL and BROWNING, Circuit Judges, and TAYLOR, District Judge

MERRILL, Circuit Judge:

This case is before the court upon petition of the National Labor Relations Board to enforce its order issued against respondent on June 16, 1965, following proceedings under §10(c) of the National Labor Relations Act, 29 U.S.C. §§151, *et seq.* The Board's decision and order are reported at 152 N.L.R.B. 1645 (1965).

The Board found that respondent company, by requiring newly hired employees to join respondent union immediately, as a condition of employment, by furnishing new employees with union cards, by deducting union dues and initiation fees from the employees' pay during the first thirty days of employment[1] and

[1] §8(a)(3) permits an employer, pursuant to agreement with a union, to require union membership "after the thirtieth day following the beginning of such employment."

forwarding these deductions to the union, thereby assisted the union in violation of §8(a)(2) and (1) of the Act. The Board found that the company and the union, by jointly engaging in a practice whereby newly hired employees were required to join the union and pay union dues and initiation fees during the first thirty days of employment, violated §8(a)(1), (2) and (3), and §8(b)(2) and (1)(A) of the Act.

The Board's order directs respondents to cease and desist from checking off union dues for employees pursuant to membership dues checkoff authorizations, unlawfully obtained from the employees prior to the thirty-day statutory period, and from in any like or related manner interfering with employees in the exercise of their §7 rights, and to post the usual notices. The Board further ordered respondents, jointly and severally, to reimburse all employees hired within six months[2] prior to the time the charge was filed in this case for their first month's dues, and to reimburse those employees who, during the same period, paid initiation fees but worked less than thirty days for the initiation fees so deducted.

The union challenges the Board's finding of an unfair labor practice, asserting that the newly hired employees voluntarily joined. In our judgment the Board's finding is supported by substantial evidence.

The union's main attack is upon the Board's order that reimbursement apply to all employees hired within the time limits specified in the order. It contends that the remedy of reimbursement should be limited to the one employee who filed the unfair labor practice charge with the Board.

The union first contends that the charges filed were not broad enough to encompass any conduct other than that which occurred in the case of the charging individual. We do not so read the charges. They were that "Madeline Ritchey and others" had been "required" or "caused" to become members of the union as a condition of employment, and that "by these and other acts" respondents had "coerced and restrained employees" in violation of §7 of the Act.

The union's principal contention is that the order is contrary to an agreement of settlement reached by the Board and the

[2] 29 U.S.C. §160(b) (1964) precludes a Board complaint "based upon any unfair labor practice occurring more than six months prior to the filing of the charge * * *."

union, which limited reimbursement to Madeline Ritchey. There is no question but that such was the nature of the agreement as proposed by the Board's field examiner and acceded to by the union, and that this proposal was the express subject of an exchange of correspondence. The trial examiner found that an agreement had been reached.

The Board's ruling to the contrary was based upon the fact that the agreement had not been approved in writing by the Board's regional director, but instead had been rejected by him for the reason that without extending reimbursement to all those ultimately covered by the Board's order, a complete remedy for the unfair labor practice would not be provided.

The field examiner, in forwarding a copy of his proposed settlement agreement, had stated that it was being recommended by him "subject to the approval of the regional director." Settlement agreements are the subject of NLRB Statement of Procedure §101.7, which expressly states that agreements are "subject to the approval of the regional director."

The union vigorously contends that it is unwise to stand upon the requirement of approval and to construe that requirement as for approval in writing. It echoes the views of the trial examiner, who ruled that the proposed agreement should bind the Board; he reasoned that a contrary rule would impart an undesirable degree of uncertainty to settlement negotiations and discourage negotiation in the field.

The Board, however, found other considerations to be more impelling. It stated:

> "We reject the trial examiner's conclusion that there are 'any number of ways' in which the regional director can give his approval to a settlement agreement. In our opinion it is necessary that the regional director expressly approve in writing the offered settlement in its totality after all disputed issues are resolved. Anything short of this position opens the door to possible confusion and misunderstanding as to whether or not a settlement has been effectuated, as in the instant case."

Such policy decisions clearly are within the broad discretion of the Board.[3] The question here relates to the wisdom of the rule

[3]"Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding un-

in the public interest rather than to the injustice of strict construction in a particular case. Further we do not find here a completely arbitrary departure from settled administrative practice, such as has been felt to warrant judicial intervention. *Cf., Sunbeam Television Corp. v. FCC*, 243 F.2d 26 (D.C.Cir. 1957).[4]

The company attack on the Board's order is directed to the fact that the company has been made responsible for reimbursement jointly and severally with the union. It should instead, it contends, have been made secondarily responsible. The present order, it asserts, may well result in unjust enrichment of the union, and to permit the union thus to enrich itself can hardly be said to accomplish the purposes of the Act.

We are not unsympathetic with the company's position and certainly the Board could have provided secondary responsibility had it so chosen. The choice, however, remains that of the Board, and it is clear that the choice of joint and several liability is available to the Board when both the union and the employer had engaged in the discriminatory practice. *NLRB v. Newspaper and Mail Deliverers Union*, 192 F.2d 654 (2d Cir. 1951); *Union Starch and Refining Company v. NLRB*, 186 F.2d 1008 (7th Cir. 1951), *cert. denied*, 342 U.S. 815 (1951); also *cf., NLRB v. Pinkerton National Detective Agency*, 202 F.2d 230 (9th Cir. 1953). We would have a different case if the company had strongly resisted the imposition of this practice by the union. See *NLRB v. Lexington Elec. Products Co.*, 283 F.2d 54 (3d Cir. 1960).

The order is entitled to enforcement. So ordered.

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consciously from the narrow confines of law into the more spacious domain of policy." *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941).

[4]The Board itself, in past cases, has recognized the policy considerations noted by the trial examiner, but the force given to them has depended on the circumstances of the particular case. *Sherry & Gordon Co.*, 107 N.L.R.B. 113 (1953); see also *United Dairy Co.*, 146 N.L.R.B. 187 (1964); *Tomkin Motor Lines, Inc.*, 142 N.L.R.B. 1 (1963); *Jackson Mfg. Co.*, 129 N.L.R.B. 460 (1960); *Corn Products Refining Co.*, 22 N.L.R.B. 824 (1940); *Wickwire Bros.*, 16 N.L.R.B. 316 (1939); *Godchaux Sugars, Inc.*, 12 N.L.R.B. 568 (1939); *Shenandoah-Dives Mining Co.*, 11 N.L.R.B. 885 (1939). All prior cases are distinguishable from the case before us, and we disagree with the union's contention that there existed any established rule contrary to that here announced. Arbitrary disregard of this rule in the future would present a different question. See *Burinskas v. NLRB*, 357 F.2d 822 (D.C.Cir. 1966).

United States Court of Appeals
For the Ninth Circuit

National Labor Relations Board, Petitioner, vs. Campbell Soup Company and Butchers Union Local 127, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Respondents.	No. 21,297

DECREE

Before: Merrill and Browning, Circuit Judges, and Taylor, District Judge:

This Cause came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it against the Respondent, Campbell Soup Company, Modesto, California, its officers, agents, successors, and assigns and Respondent, Butchers Union Local 127, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, its officers, agents, and representatives on June 16, 1965. The Court heard argument of respective counsel on April 10, 1967, and has considered the briefs and transcript of record filed in this cause. On May 23, 1967, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's order. In conformity therewith, it is hereby

Ordered, Adjudged And Decreed by the United States Court of Appeals for the Ninth Circuit that:

A. The Respondent, Campbell Soup Company, Modesto, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing support to Butchers Union Local No. 127, Amalgamated Meat Cutters and Butcher Workmen of North America (AFL-CIO), or any labor organization, by its practice of informing prospective and/or newly-hired employees of the requirement that employees must join the Union immediately, furnishing prospective employees with application for membership cards and initiation fees and dues checkoff authorizations, and deducting the said dues and initiation fees and paying the same over to the said Union, prior to the 30-day statutory grace period following employment.

(b) Requiring prospective or newly-hired employees to execute membership-dues-checkoff authorization cards for the aforementioned Union, or any other labor organization, prior to the expiration of the 30-day grace period provided for in Section 8(a)(3) of the National Labor Relations Act, as amended, (hereinafter called the Act).

(c) Checking off union dues for employees pursuant to membership-dues-checkoff authorizations unlawfully obtained from employees prior to the 30-day statutory period.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Union, reimburse all employees for moneys illegally exacted from them, in the manner and to the extent set forth in the section of the Board's Decision and Order entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to determine the amount of the moneys illegally exacted from the employees involved.